

AMENDED IN SENATE JUNE 28, 2005

AMENDED IN ASSEMBLY APRIL 18, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

---

---

**ASSEMBLY BILL**

**No. 361**

**Introduced by Assembly Member Sharon Runner**

February 11, 2005

---

---

An act to amend Section 1189 of the Civil Code, to amend ~~Sections 8206 and Section 8225~~ of, and to add Sections 8214.8 and 8228.1 to, the Government Code, and to amend Section 470 of the Penal Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

AB 361, as amended, Sharon Runner. Notaries public.

Existing law generally sets forth the procedures for proof and acknowledgment of instruments executed before notaries public and prescribes administrative penalties and civil fines for violation of provisions that govern notaries public.

This bill would make it a misdemeanor for notary public to willfully fail to perform the required duties of a notary public or to willfully fail to keep the seal of the notary under his or her direct and exclusive control. The bill would require a court to revoke the commission of a notary public, upon conviction of any offense related to his or her duties, or of any felony and would require surrender to the court of the seal of the notary public, which would then be forwarded to the Secretary of State. The bill would make other related changes. By

creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1189 of the Civil Code is amended to  
2 read:

3 1189. (a) Any certificate of acknowledgment taken within  
4 this state shall be in the following form:

5  
6 State of California                     )  
7 County of \_\_\_\_\_ )  
8

9 On \_\_\_\_\_ before me,  
10 (here insert name and title of the  
11 officer), personally appeared \_\_\_\_\_,  
12 personally known to me (or proved to me on the basis of  
13 satisfactory evidence) to be the person(s) whose name(s) is/are  
14 subscribed to the within instrument and acknowledged to me that  
15 he/she/they executed the same in his/her/their authorized  
16 capacity(ies), and that by his/her/their signature(s) on the  
17 instrument the person(s), or the entity upon behalf of which the  
18 person(s) acted, executed the instrument.  
19

20 WITNESS my hand and official seal.  
21

22 Signature \_\_\_\_\_ (Seal)  
23

24 (b) Any certificate of acknowledgment taken in another place  
25 shall be sufficient in this state if it is taken in accordance with the  
26 laws of the place where the acknowledgment is made.

(c) On documents to be filed in another state or jurisdiction of the United States, a California notary public may complete any acknowledgment form as may be required in that other state or jurisdiction on a document, provided the form does not require the notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law.

(d) An acknowledgment provided prior to January 1, 1993, and conforming to applicable provisions of former Sections 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335 of the Statutes of 1990, shall have the same force and effect as if those sections had not been repealed.

~~SEC. 2. Section 8206 of the Government Code is amended to read:~~

~~8206. (a) (1) A notary public shall keep one active sequential journal at a time, of all official acts performed as a notary public. The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the journal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.~~

~~(2) The journal shall be in addition to and apart from any copies of notarized documents that may be in the possession of the notary public and shall include all of the following:~~

~~(A) Date, time, and type of each official act.~~

~~(B) Character of every instrument sworn to, affirmed, acknowledged, or proved before the notary.~~

~~(C) The signature of each person whose signature is being notarized.~~

~~(D) A statement as to whether the identity of a person making an acknowledgment or taking an oath or affirmation was based on personal knowledge or satisfactory evidence. If identity was established by satisfactory evidence pursuant to Section 1185 of the Civil Code, then the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document.~~

1 ~~(E) If the identity of the person making the acknowledgment~~  
2 ~~or taking the oath or affirmation was established by the oaths or~~  
3 ~~affirmations of two credible witnesses whose identities are~~  
4 ~~proven upon the presentation of satisfactory evidence, the type of~~  
5 ~~identifying documents, the identifying numbers of the documents~~  
6 ~~and the dates of issuance or expiration of the documents~~  
7 ~~presented by the witnesses to establish their identity.~~

8 ~~(F) The fee charged for the notarial service.~~

9 ~~(G) For every document to be notarized, the notary public~~  
10 ~~shall require the party signing the document to place his or her~~  
11 ~~right thumbprint in the journal. If the right thumbprint is not~~  
12 ~~available, then the notary shall have the party use his or her left~~  
13 ~~thumb, or any available finger and shall so indicate in the journal.~~  
14 ~~If the party signing the document is physically unable to provide~~  
15 ~~a thumbprint or fingerprint, the notary shall so indicate in the~~  
16 ~~journal and shall also provide an explanation of that physical~~  
17 ~~condition.~~

18 ~~(b) If a sequential journal of official acts performed by a~~  
19 ~~notary public is stolen, lost, misplaced, destroyed, damaged, or~~  
20 ~~otherwise rendered unusable as a record of notarial acts and~~  
21 ~~information, the notary public shall immediately notify the~~  
22 ~~Secretary of State by certified or registered mail. The notification~~  
23 ~~shall include the period of the journal entries, the notary public~~  
24 ~~commission number, and the expiration date of the commission,~~  
25 ~~and when applicable, a photocopy of any police report that~~  
26 ~~specifies the theft of the sequential journal of official acts.~~

27 ~~(c) Upon written request of any member of the public, which~~  
28 ~~request shall include the name of the parties, the type of~~  
29 ~~document, and the month and year in which notarized, the notary~~  
30 ~~shall supply a photostatic copy of the line item representing the~~  
31 ~~requested transaction at a cost of not more than thirty cents~~  
32 ~~(\$0.30) per page.~~

33 ~~(d) The journal of notarial acts of a notary public is the~~  
34 ~~exclusive property of that notary public, and shall not be~~  
35 ~~surrendered to an employer upon termination of employment,~~  
36 ~~whether or not the employer paid for the journal, or at any other~~  
37 ~~time. The notary public shall not surrender the journal to any~~  
38 ~~other person, except the county clerk, pursuant to Section 8209,~~  
39 ~~or to a peace officer, as defined in Sections 830.1, 830.2, and~~  
40 ~~830.3 of the Penal Code, acting in his or her official capacity and~~

~~within his or her authority, in response to a criminal search warrant signed by a magistrate and served upon the notary public by the peace officer. The notary public shall obtain a receipt for the journal, and shall notify the Secretary of State by certified mail within 10 days that the journal was relinquished to a peace officer. The notification shall include the period of the journal entries, the commission number of the notary public, the expiration date of the commission, and a photocopy of the receipt. The notary public shall obtain a new sequential journal. If the journal relinquished to a peace officer is returned to the notary public and a new journal has been obtained, the notary public shall make no new entries in the returned journal. A notary public who is an employee shall permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary public's employer, provided that the inspection and copying is done in the presence of the notary public and the transactions are directly associated with the business purposes of the employer. The notary public, upon the request of the employer, shall regularly provide copies of all transactions that are directly associated with the business purposes of the employer, but shall not be required to provide copies of any transaction that is unrelated to the employer's business. Confidentiality and safekeeping of any copies of the journal provided to the employer shall be the responsibility of that employer.~~

~~(e) The notary public shall provide the journal for examination and copying in the presence of the notary public upon receipt of a subpoena duces tecum or a court order, and shall certify those copies if requested.~~

~~SEC. 3.—~~

*SEC. 2.* Section 8214.8 is added to the Government Code, to read:

8214.8. Upon conviction of any offense in this chapter, or of Section 6203, or of any felony, of a person commissioned as a notary public, in addition to any other penalty, the court shall revoke the commission of the notary public, and shall require the notary public to surrender to the court the seal of the notary public. The court shall forward the seal, together with a certified copy of the judgment of conviction, to the Secretary of State.

1     ~~SEC. 4.—~~

2     *SEC. 3.* Section 8225 of the Government Code is amended to  
3 read:

4     8225. (a) Any person who solicits, coerces, or in any manner  
5 influences a notary public to perform an improper notarial act  
6 knowing that act to be an improper notarial act, including any act  
7 required of a notary public under Section 8206, shall be guilty of  
8 a misdemeanor.

9     (b) The penalty provided by this section is not an exclusive  
10 remedy, and does not affect any other relief or remedy provided  
11 by law.

12     ~~SEC. 5.—~~

13     *SEC. 4.* Section 8228.1 is added to the Government Code, to  
14 read:

15     8228.1. (a) Any notary public who willfully fails to perform  
16 any duty required of a notary public under Section 8206, or who  
17 willfully fails to keep the seal of the notary public under the  
18 direct and exclusive control of the notary public, or who  
19 surrenders the seal of the notary public to any person not  
20 otherwise authorized by law to possess the seal of the notary,  
21 shall be guilty of a misdemeanor.

22     (b) The penalty provided by this section is not an exclusive  
23 remedy, and does not affect any other relief or remedy provided  
24 by law.

25     ~~SEC. 7.—~~

26     *SEC. 5.* Section 470 of the Penal Code is amended to read:

27     470. (a) Every person who, with the intent to defraud,  
28 knowing that he or she has no authority to do so, signs the name  
29 of another person or of a fictitious person to any of the items  
30 listed in subdivision (d) is guilty of forgery.

31     (b) Every person who, with the intent to defraud, counterfeits  
32 or forges the seal or handwriting of another is guilty of forgery.

33     (c) Every person who, with the intent to defraud, alters,  
34 corrupts, or falsifies any record of any will, codicil, conveyance,  
35 or other instrument, the record of which is by law evidence, or  
36 any record of any judgment of a court or the return of any officer  
37 to any process of any court, is guilty of forgery.

38     (d) Every person who, with the intent to defraud, falsely  
39 makes, alters, forges, or counterfeits, utters, publishes, passes or  
40 attempts or offers to pass, as true and genuine, any of the

1 following items, knowing the same to be false, altered, forged, or  
 2 counterfeited, is guilty of forgery: any check, bond, bank bill, or  
 3 note, cashier's check, traveler's check, money order, post note,  
 4 draft, any controller's warrant for the payment of money at the  
 5 treasury, county order or warrant, or request for the payment of  
 6 money, receipt for money or goods, bill of exchange, promissory  
 7 note, order, or any assignment of any bond, writing obligatory, or  
 8 other contract for money or other property, contract, due bill for  
 9 payment of money or property, receipt for money or property,  
 10 passage ticket, lottery ticket or share purporting to be issued  
 11 under the California State Lottery Act of 1984, trading stamp,  
 12 power of attorney, certificate of ownership or other document  
 13 evidencing ownership of a vehicle or undocumented vessel, or  
 14 any certificate of any share, right, or interest in the stock of any  
 15 corporation or association, or the delivery of goods or chattels of  
 16 any kind, or for the delivery of any instrument of writing, or  
 17 acquittance, release or discharge of any debt, account, suit,  
 18 action, demand, or any other thing, real or personal, or any  
 19 transfer or assurance of money, certificate of shares of stock,  
 20 goods, chattels, or other property whatever, or any letter of  
 21 attorney, or other power to receive money, or to receive or  
 22 transfer certificates of shares of stock or annuities, or to let, lease,  
 23 dispose of, alien, or convey any goods, chattels, lands, or  
 24 tenements, or other estate, real or personal, or falsifies the  
 25 acknowledgment of any notary public, or any notary public who  
 26 issues an acknowledgment knowing it to be false; or any matter  
 27 described in subdivision (b).

28 (e) Upon a trial for forging any bill or note purporting to be  
 29 the bill or note of an incorporated company or bank, or for  
 30 passing, or attempting to pass, or having in possession with intent  
 31 to pass, any forged bill or note, it is not necessary to prove the  
 32 incorporation of the bank or company by the charter or act of  
 33 incorporation, but it may be proved by general reputation; and  
 34 persons of skill are competent witnesses to prove that the bill or  
 35 note is forged or counterfeited.

36 ~~SEC. 8.—~~

37 *SEC. 6.* No reimbursement is required by this act pursuant to  
 38 Section 6 of Article XIII B of the California Constitution because  
 39 the only costs that may be incurred by a local agency or school  
 40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the  
2 penalty for a crime or infraction, within the meaning of Section  
3 17556 of the Government Code, or changes the definition of a  
4 crime within the meaning of Section 6 of Article XIII B of the  
5 California Constitution.

O